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No. 05-1563

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In The

Supreme Court of the United States

SCHIFFAHRTSGESELLSCHAFT
MS PRIWALL MBH & CO. KG and
REEDEREI F. LAEISZ G.M.B.H., ROSTOCK,

Petitioners,

v.

CORNELIUS HILL and
TRUDIE HASTINGS HILL, H/W,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit**

BRIEF IN OPPOSITION

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COUNTER STATEMENT OF THE CASE

Respondent accepts the Statement of the Case as set forth by Petitioner but believes the following facts should be added:

The Chief Mate was responsible for the proper securing of the cargo. This required him to visually examine every turnbuckle and lashing rod after they were secured, and he frequently had to touch the lashing bars. If one was not secured to his satisfaction, he then reported that to the lashing foreman and had it re-tightened or re-lashed, as the case may be. After the corrective work was done, he then made another inspection to make certain that the lashing was proper. It was vital to the stability of the vessel that the loaded containers be secured so they wouldn't move when the vessel was at sea, particularly in a storm.

The Chief Mate was also responsible for the maintenance of the lashing bars and turnbuckles, which were part of the ship's equipment. Rusty turnbuckles without grease was negligent maintenance according to Respondent's expert, a Master Mariner with container ship experience.

When Jones was trying to unlash, he noticed that the turnbuckle was rusty and had no grease on it. He could not see if the lashing rod was properly seated in the container at the top. He could, however, see that it was in the container. The rusty turnbuckle was frozen, so Jones hit it once, twice or three times. The 18 or 19 foot lashing rod then flew out away from the container and struck Hill in the back of the head, neck and back. Hill was about 32' away, with his back to Jones.

Striking a frozen turnbuckle with a wrench to loosen it was the way the job has always been done on the Philadelphia waterfront.

SUMMARY OF THE ARGUMENT

The Court of Appeals opinion is completely in accord with this Court's precedent; is completely in accord with Third Circuit precedent and does not present a conflict with any other circuits.

ARGUMENT

The lodestone case defining a shipowner's duties, of course, is *Scindia Steam Navigation Co., Ltd. v. De Los Santos*, 451 U.S. 156 (1981). *Scindia* clearly established the turnover duty and the corollary duty to warn.

The Third Circuit Court of Appeals, in an opinion by Becker, J. applied and expounded on the turnover duty in *Kirsch v. Prekookeanska Plovidba*, 971 F.2d 1026 (3rd Cir. 1992). *Kirsch* simply clarified what should be expected of a shipowner when it turns its vessel over to an "expert and experienced" stevedore to be worked.

In this case the Third Circuit simply recognized that as part of the turnover duty a shipowner needs some understanding of the work to be done in order to turn over a ship that will enable that work to be done with reasonable safety to persons and property.

The Court of Appeals opinion creates no duty to supervise either loading or unloading at any time. Here

the lashing was put on by a foreign stevedore, but it was the Chief Mate's responsibility to make certain that it was done properly because he certainly didn't want loaded containers to come loose while the ship was at sea, especially in a storm.

It was also the Chief Mate's responsibility to make certain that the turnbuckles were properly maintained so that the unlashing could be done safely and properly. Proper maintenance would have prevented the formation of rust and the freezing of the turnbuckles, both of which were present in this case. This was the testimony of Respondent's expert, a Master Mariner with a great deal of container ship experience.

The Court of Appeals opinion also imposes no duty to anticipate the negligence of a careless longshoreman/stevedore. An appreciation of the work to be done is simply relevant to the condition of the vessel when it is turned over, and it bears directly on what hazards the shipowner can reasonably expect the stevedore to avoid or mitigate. Petitioner's argument is a back door effort to inject superseding cause concepts into the turnover duty requirements.

Finally, there is absolutely no conflict whatsoever between the Court of Appeals opinion and the circuit cases cited, to wit: *Polizzi v. M/V Zephyros II Monrovia,* 860 F.2d 147 (5th Cir. 1988), citing *Morris v. Compagnie Maritime Des Chargeurs Reunis, S.A.*, 832 F.2d 67 (5th Cir. 1987) and *Ludwig v. Pan Ocean Shipping Co.*, 941 F.2d 849 (9th Cir. 1991).

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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